IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 01-12-2006

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Crl.R.C.No.1307 of 2004

Kalyani ... Petitioner

-vs-

V.Venkatraman ... Respondent

Criminal Revision filed under Section 397 Crl.P.C r/w Sec.401 Crl.P.C against the order passed by the I Additional Judge, Family Court, Chennai, in dismissing the petition filed by the petitioner for claming maintenance U/s. 125 Cr.P.C.

For petitioner : Mr.P.V.Bakthavatchalam
For respondent : Mr.V.Srinivasan

O R D E R

This Criminal Revision has been preferred by the petitioner in M.C.No.190/2003 on the file of the first Additional Sessions Judge, Family Court, Chennai, against the order of dismissal, dated 05.03.2004.

2. According to the petitioner, the respondent herein married her on 26.08.2002, as per Hindu Customs and rituals. She has further stated that the respondent had caused cruelty on the petitioner, saying that she was suffering from leukoderma and sent her to her parents house on 27.04.2003, along with her brother and that the respondent is getting a monthly income of Rs.25,000/- from and out of his coconut grove and agricultural lands and has demanded Rs.4,000/- per month towards her maintenance.

3. The respondent herein has admitted the marriage between himself and the petitioner. According to him, prior to the marriage, it was not informed to him that the petitioner was suffering from leukoderma, but informed that she had some skin disease. After the marriage, he came to know that she was affected by leukoderma, but he denied the allegation, saying that the petitioner was not subjected to cruelty by him. He has further contended that the petitioner has got back his srithana properties and also Rs.25,000/-.

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4. According to the respondent, he has no agricultural properties and income, as alleged by the petitioner and that he was living in the house of his maternal uncle and that he married a woman and living with her in the house of his uncle.

5. In support of the claim of the petitioner, she was examined as P.W.1 before the trial court and the marriage invitation of the petitioner and the respondent was marked as Ex.P.1. The respondent himself was examined as D.W.1 and the alleged unregistered agreement, dated 27.04.2003 between the petitioner and the respondent was marked as Ex.R.1.

6. Mr.P.V.Bakthavatchalam, learned counsel appearing for the revision petitioner would contend that the respondent has admitted the marriage between himself and the petitioner herein and that there was no decree of divorce dissolving the marriage, hence, the petitioner is the legally wedded wife of the respondent. As per Ex.R.1, the petitioner had received only the srithana properties, such as Fridge, Bero, Sewing Machine and Utensils and the amount of Rs.25,000/- paid by the parents of the petitioner herein. The aforesaid amount was not paid by the respondent towards her maintenance.

7. As per Section 125 of the Code of Criminal Procedure, 1973, if any person having sufficient means, neglects or refuses to maintain his wife, who is unable to maintain herself is bound to pay maintenance to his wife. Here, in the instant case, as the petitioner was suffering from leukoderma / skin disease, she was sent out from her matrimonial home by the respondent and he is also living with some other woman as husband and wife, though law does not recognise the same, at the house of the respondent's uncle. In such circumstances, the respondent is bound to pay maintenance to the petitioner, being his wife, who is unable to maintain herself.

8. The trial court, without considering the issue legally, as contemplated under Section 125 of the Code of Criminal Procedure, has dismissed the petition, on the ground that the respondent could not live with the petitioner, on account of the petitioners alleged skin disease. Therefore, I am of the considered view that the trial court has improperly dismissed the petition, filed under Section 125 of the Code of Criminal Procedure, seeking maintenance, without considering the legal aspect. As per Section 125 of the Code of Criminal Procedure, the petitioner, being the wife of the respondent, on the facts and circumstances of the case, is entitled to maintenance.

9. According to the revision petitioner, the respondent is owning agricultural lands and coconut grove and thereby getting an income of Rs.25,000/- per month. The respondent has simply denied the averments and not produced any supporting documents to show his income. It being a maintenance case, mere denial of income would not be sufficient. On the

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available evidence, I find it reasonable, in order to meet the ends of justice, by directing the respondent to pay a monthly maintenance of Rs.1,500/- to the petitioner, from the date of filing of the M.C.No.190 of 2003 on the file of the Family Court, Chennai.

10. In the result, the Criminal Revision is allowed and the impugned order of the court below is set aside. The respondent herein is directed to pay a monthly maintenance of Rs.1,500/- to the petitioner from the date of filing of M.C.No.190 of 2003 on the file of the Family Court, Chennai and the arrears of maintenance shall be paid, within three months from the date of receipt of the copy of this order. The petitioner is also entitled to get the aforesaid award of Rs.1,500/- as regular maintenance.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsvn

To

1. The I Additional Judge, Family Court, Chennai,

2. The Public Prosecutor
High Court of Madras, Chennai.

1 cc To Mr.P.V.Bakthavatchalam, Advocate, SR.59297.

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SSV(CO)
RVL 09.06.2007

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